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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/650,738	08/30/2000	Osamu Itokawa	35.C14752	2440
5514	7590	06/03/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			CHANG, JON CARLTON	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/650,738	ITOKAWA, OSAMU	
	Examiner	Art Unit	
	Jon Chang	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-18,20 and 21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,20 and 21 is/are rejected.
- 7) Claim(s) 4-18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 August 2000 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

Response to Applicant's Amendment and Arguments

1. The amendment filed February 18, 2005, has been entered and made of record. Claim 19 has been cancelled. Claims 1, 7, 20 and 21 have been amended. Claims 1, 4-18, 20 and 21 are pending.

In response to the amendment, the rejection of claim 20 under 35 U.S.C. § 101 is withdrawn.

In response to the amendment, the objection to claims 1, 20 and 21 because of informalities, is withdrawn. The cancellation of claim 19 renders moot the objection to claim 19 on this ground.

In response to the amendment, the rejection of claim 7 under 35 U.S.C. § 112, second paragraph, is withdrawn.

The cancellation of claim 19 renders moot the double patenting rejection of that claim.

The indicated allowability of claims 1 and 21 is withdrawn in view of the double patenting rejection applied below.

This Office Action contains a new ground of rejection, and is therefore non-final.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 20 and 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,810,079. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 20 and 21 of the instant application covers the same subject matter as that of claim 8, while providing a broader recitation of the same invention, and with minor differences being well known in the art..

For example, the function recited in a) of current claim 1 is inherent in step a) of the patent's claim 1 (from which claim 8 ultimately depends). The function recited in b) of current claim 1 is provided for by the patent's claim 2 (from which claim 8 depends). The function recited in c) of current claim 1 is provided for by the patent's claim 7 (from which claim 8 directly depends). The function recited in d) of current claim 1 is provided for by the patent's claim 2. The function recited in e) of current claim 1 is provided for by the patent's claim 1, steps b) and c). Note that the patent's specification defines converging (step c)) as utilizing an active contour model (column 8, lines 50-51). The patent's claim 8 is drawn to a method, whereas current claim 1 is drawn to an apparatus, performing an analogous method. The Examiner takes Official Notice that

apparatus are well known for implementing image processing methods. It would have been obvious to one of ordinary skill in the art to implement the invention of the patent's claim 8 in an apparatus because this would allow the method to be performed.

An analysis similar to that presented above for current claim 1 is applicable to claim 21.

An analysis similar to that presented above for current claim 1 is applicable to current claim 20, with regard to the claimed elements. The patent's claim 8 is drawn to a method, whereas current claim 20 is drawn to a computer-readable storage medium storing program codes for causing a computer to perform the image processing steps. The Examiner takes Official Notice that computer-readable storage medium storing program codes for causing a computer to perform image processing steps are well known in the art. Use of a computer and associated computer-readable storage medium has many inherent advantages for performing image processing, including improved flexibility, the widespread availability of computers, the low cost of computers, etc. Therefore, it would have been obvious to one of ordinary skill in the art to implement the invention of the patent's claim 8 in an a computer with associated computer-readable medium.

Allowable Subject Matter

4. Claims 4-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon Chang whose telephone number is (571) 272-7417. The examiner can normally be reached on M-F 8:00 a.m.-6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amelia Au can be reached on (571)272-7414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jon Chang
Primary Examiner
Art Unit 2623

Jon Chang
May 29, 2005